IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 770 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESH NAGJIBHAI VADESA

Versus

TDO

Appearance:

1. Special Civil Application No. 770 of 1996

MR AK CLERK for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 23/03/2004

ORAL JUDGEMENT

Heard the Learned Advocate Mr.A.K.Clerk on behalf of the petitioner and Learned Advocate Mr.H.S.Munshaw

appearing on behalf of the respondent.

2. In the present petition, petitioner workmen has challenged the award passed by the Labour Court, Bhavnagar in Reference No.76/93 dated 1st July 1995 wherein reference has been rejected by the Labour Court. Learned Advocate Mr. A.K.Clerk appearing on behalf of the petitioner workmen submitted that there was no dispute about the length of service which has been rendered by the workmen with the respondent. The total period of service w.e.f.23rd June 1983 and his service has been terminated on 7th April 1986. Atleast about three years the workmen was in service with the respondent. Mr.Clerk further submitted that total three years of service were rendered by the workmen continuously without any break but on periodical basis but ultimately at the time of termination Section 25 (f) has not been complied by the respondent. He also submitted that some juniors were working at the time of terminating the service of the workmen. He also submitted that respondent has not given any justification for terminating the service of the petitioner. He also submitted that selected candidate was not available at the time of service when service of the petitioner were terminated by the respondent. Therefore, according to him such termination is arbitrary and violated Section 25 (f) of I.D.Act, 1947 and, therefore, that is why the workmen is entitled for full relief of reinstatement with backwages.

3. Learned Advocate Mr.Munshaw has supported the award passed by the Labour Court. Mr.Munshaw has submitted that periodical appointment was given to the workmen and his services come to an end by eflux of time. Therefore, in appointment order the date of termination has been mentioned and accordingly his service has come to end. Therefore the respondent has not committed any breach of Section 25 (F),(G) and (H) and petitioner was not a selected employee by the Seva Mandal and, therefore, termination is legal and valid which has been rightly award passed by the Labour Court and no interference is required.

4. I have considered the submissions made by both the learned advocates. I have perused the award passed by the Labour Court, Bhavnagar. Learned Advocate Mr. Clerk has submitted that from the record it is found that in all 30 appointment letters were issued by the respondent to the workmen during the period of three years. The question is that Labour Court has decided this matter in a casual manner. Labour Court has not

discussed the evidence, not only that but not referred the documents and not given any finding that how the order of termination is legal and valid. Without giving any reasons in support of the award straight away the reference has been rejected by the Labour Court. The Labour Court has come to the conclusion that Section 25 (F),(G) and (H) has not been violated by the respondent but for that Labour Court has not examined the matter that whether such termination has come within the definition of retrenchment or not. Such a casual approach by the Labour Court in a termination matter this practice has deprecated by this Court. However, considering the record the total service rendered by the workmen is about three years from 1983 to 1986 and Section 25 (f) has not been complied by the respondent. It is not the case of the respondent that they have complied Section 25 (f) of I.D.Act, 1947. The workmen has rendered service without any break within the meaning of Section 25 (B) of I.D.Act, 1947. Therefore, any workmen remained continuous service within the meaning of Section 25 (B) of I.D.Act and completed 240 days continuous service or one year then workmen is entitled for benefit of Section 25 (F) of I.D.Act, 1947. That condition precedent has not been complied by the respondent. Therefore, according to my opinion the order of termination is required to be quashed and set aside. The Labour Court has committed gross error in coming to the conclusion that Section 25 (F), (G) and (H) had not been violated by the respondent. Therefore, that is a basic error which found apparently on face of the record without any reasons given by the Labour Court and therefore, the award in question is required to be set aside. The Labour Court has not discussed the question that termination comes within the definition of retrenchment or not even no such contention was raised by the respondent before the Labour Court. Therefore, considering this fact Labour Court has committed gross error in passing such award.

5. The question now requires to be examined by this Court that workmen is entitled how much amount of backwages as there is no evidence on record. Whether workmen is out of job during the pendency of case, Labour Court has not discussed the oral evidence of unemployment of the workmen. The workmen was examined before the Labour Court vide Exh.85 and one witness on behalf of respondent was examined vide Exh.86. That Labour Court has not discussed other evidence but Mr.Clerk having the copy of deposition of workmen as well as the witness of respondent. Looking to the evidence of workmen he has admitted that during the interim period each month about

Rs.150/- earned by him by working in a tea stall and, therefore, except that the rest of the part of gainful employment is not proved by the respondent. Therefore, considering this fact as well as the pendency of reference about more than 9 years and before this Court about another 8 years, so in all 17 years pendency of reference and petition where the workmen has remained out of job. In such circumstances the same presumption can be drawn against the workmen that he must have earned something by doing this miscellaneous work and maintains the family and, therefore, to some extend gainful employment can be presumed against the workmen. In respect to the respondent who is a public body and if a full backwages have been ordered then it is a burden upon the public exchequer and, therefore, considering this both the facts keeping in mind any such situation the Apex Court reported decision in AIR 2000 page 454 in case of Management of M.C.D. vs. Prem Chand Gupta & Ors. has decided that 50% of backwages would be a proper backwages. The relevant paragraph from the said decision are quoted as under:

"18. We have now reached the stage for considering appropriate relief to be granted in the light of our findings on Point No.2. Once it is held that termination of the respondent-workman on 29-4-1966 was null and void being violative of Section 25-F of the I.D.Act, the logical consequence would be that he would be entitled to be re-instated in service with continuity and in normal course would be entitled to full back-wages. However, in our view on the peculiar facts of this case, it will not be appropriate to grant full back-wages to the respondent-workman even though he will be entitled to be reinstated in service of the appellant-Corporation with continuity and all further consequential benefits on that score, save and except the grant of full back-wages, as indicated herein below.

19. The reasons for non-granting full back-wages from the date of his termination of 29-4-1966 till actual re-instatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered on for more than

three decades. The termination order was as early as on 29-4-1966 and after 33 years and more it is being set aside. To saddle the appellant-Corporation and its exchequer, which is meant for public benefit, with full back-wages for entire period would be too harsh to the appellant-Corporation. It is the delay in disposal of cases in the Courts that has created this unfortunate situation for both the sides. Respondent-workman is also not at fault as he was clamouring for justice for all these years. However, this delay in Court proceedings for no fault of either side permits us not to burden the appellant-Corporation, being a public body, with the full back-wages for the entire period of respondent-workman's unemployment, especially when for no fault of either side actual work could not be taken from the respondent-workman by the appellant-Corporation. It is true that the respondent-workman was always willing to work but he could not be permitted to work so long as the termination order stood against him. The Labour Court as well as the learned single Judge upheld that order. Only the Division Bench set aside that order. This Court at SLP stage itself while granting leave stayed reinstatement order on 17-11-1997. Two more years since elasped during the pendency of this appeal before this Court. All these factors together point in the direction of not saddling the appellant-Corporation, a public body, with the burden of entire full backwages to be granted to the respondent-workman after the passage of 33 years since his order of termination. The second reason is that the respondent-workman for all these years could not have remained totally unemployed though there is no clear evidence that he was gainfully employed and was so well off that he should be denied complete back-wages. But keeping in view the fact that for all these long years fortunately the respondent-workman had survived and has still two more years to reach the age of

superannuation as we are told, not granting him full back-wages on the peculiar facts of this case, would meet the ends of justice. We, therefore, following order:

1. The impugned order of the Division Bench of the High Court insofar as it holds that the termination order of the respondent-workman dated 29-4-1966 was violative of Rule 5 of the relevant Rules is set aside.

2. However, the final order passed by the High Court ordering reinstatement of the respondent-workman with continuity of service is upheld on the alternative ground holding termination of services of the respondent-workman on 29-4-1966 to be violative of Section 25-F of the I.D.Act.

3. So far as back-wages are concerned, the impugned order of the High Court is modified by directing that the respondent-workman will be entitled to get 50% of back-wages from the date of his termination i.e. from 29-4-1966 till his actual re-instatement in service of the appellant-Corporation with continuity of service. The respondent-workman will also be entitled to all other consequential benefits including increments in the available time scale and revisions of the time scale, if any, and also further service benefits as per the rules and regulations of the appellant-Corporation being treated to have been in continuous service of the appellant-Corporation from 29-4-1966 all through out till re-instatement. The appellant-Corporation shall reinstate the respondent-workman with continuity of service within 8 weeks from today and will also pay 50% back-wages as directed hereinabove within that period. The appellant-Corporation will also grant all other consequential benefits to the respondent-workman in the light of this judgment. Appeal stands allowed as aforesaid with no order as to costs in the facts and circumstances of the case."

6. In view of this fact, when respondent has not justified, the termination before the Labour Court by leading proper evidence. It is not the case of the respondent that termination of service of the petitioner justified on the ground of selected candidate available it is not the case of the respondent that work is over and that is how the termination order has been passed. The only contention raised by the respondent that because of the periodical appointment as per the period specified in the appointment order has come to an end which resulted in termination except that no justification has been given by the respondent to terminate the service of the petitioner. The power to terminate the service of the employee is with the respondent then respondent should have to apply the legal provision and by leading proper evidence to satisfy the Labour Court that their action is fair, just and proper. That has not properly transpired and proved by the respondent before the Labour Court and there is no such discussion at all in the award. Therefore, considering these entire facts and circumstances, when workmen has remained in continues service for a period of more than three years within the meaning of 25 (B) of I.D.Act, 1947 and respondent has not complied the provision of Section 25 (F) of the I.D. Act, 1947. The order of termination is ab initio void and therefore, the workmen is entitled with reinstatement with continues service with 50% of backwages. Accordingly the award passed by the Labour Court, Bhavnagar in reference No. 76/93 dated 1st July 1995 is hereby quashed and set aside with a direction to the respondent to reinstate the petitioner workmen with continuity of service with 50% backwages for interim period. The reference No.76/93 is hereby allowed accordingly. The said direction is required to be implemented by the respondent within a period of one month for the reinstatement and for the backwages within a period of three months from the date of receiving the copy of this order. Accordingly the present petition is allowed. Rule is made absolute.

Date: /3/2004 [H.K.Rathod,J.]

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